

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL NGA 5/2019

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 35/15, 34/18, 41/12, 34/6, 40/10 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **excessive use of force by Nigerian police officers against members of the Islamic Movement in Nigeria (IMN), a Shia Muslim Minority group, during a demonstration in Abuja on 22 July 2019 and during the Ashura processions in different cities of Nigeria on 10 September 2019.**

The alleged arbitrary detention of the IMN leader, Mr. **Ibrahim El-Zakzaky**, was the subject of two previous communications to your Excellency's Government dated 8 February 2017 (NGA 1/2017) and 27 April 2017 (NGA 3/2017). We regret that to date, we have not received any response to these communications. The case of Mr. El-Zakzaky was also the subject of the Working Group on Arbitrary Detention's Opinion (81/2018), which deemed his detention as arbitrary and recommended his release. To date, Mr. El-Zakzaky is still detained.

According to the information received:

Protest against the continued detention of Mr Ibrahim El-Zakzaky

In 2019, the IMN organized several demonstrations in protest against the continued detention of their leader Mr El-Zakzaky and the allegations of deterioration of his health. During a demonstration on 22 July 2019, as the protesters approached the Ministry for Foreign Affairs, the police tried to disperse them by firing sporadic gunshots and tear gas canisters. In the ensuing clashes, fatalities and casualties occurred, including the deaths by gunshot of a Deputy

Commissioner of Police, of a journalist and of an unknown number of protesters. After the demonstration, at least 70 IMN members were arrested. Nine of them reportedly died in custody. 12 of those who remain in detention at the Special Anti-Robbery Section (SARS) facilities, have gunshot wounds and fractures and are still under the strict custody of the Police at a Police Clinic in Abuja.

On 26 July 2019, the Federal High Court in Abuja ruled that the activities of the IMN amount to “acts of terrorism and illegality” and ordered the Government to ban the group. The order was based on an ex parte motion filed by the Attorney General under the Terrorism (Prevention) Act of 2011, amended in 2013.

On 19 August 2019, another three IMN members were arrested at the Wuse Market area in Abuja. The police forcibly took them to the Abuja Police command on 27 August 2019. The three IMN members were reportedly forced to admit to the killing of Deputy Commissioner of the Police Umar Usman under duress. On that same day, another IMN member was also arrested at Banext area (Wuse 2, Abuja) for the same reason. The four individuals are detained at the Special Anti-Robbery Section (SARS) facilities, and are yet to be arraigned before a court.

On 11 September 2019, the Federal High Court n° 11 sitting in Abuja commenced hearings in the suit filed against the Attorney General of the Federation (AGF) and the Inspector General of police (IGP), seeking the enforcement of the fundamental rights of the 61 IMN members who remain in police custody since the 22 July demonstration.

Attacks on Ashura Procession

The IMN has organised annual peaceful Ashura processions in Nigeria for several decades but in recent times they have been targeted as part of a government crackdown on the movement and its leadership.

Despite the proscription ruled by the Federal High Court n° 11 on 26 July 2019, the IMN convened the annual Ashura Processions on 10 September. This year, these processions were held in all the state capitals of Northern Nigeria and in Abuja. In Abuja, Jos, Kebbi, Minna, Lafia, Yola, Gusau, Zaria, Kano, Jalingo, Damaturu, Hadejia and Potiskum the processions took place peacefully.

However, in other places, Police resorted to force leading to numerous casualties. 15 individuals have been killed and several others injured after police officers allegedly used excessive force against peaceful mourners in Kaduna (3), Bauchi (3), Azare (3), Gombe (3), Ilela (1), Goronyo (1) and Malumfashi (1). The 15 victims were buried on the following day, on 11 September. No post-mortem examinations were conducted. Some of the individuals injured were arrested and have since remained in detention without access to medical care.

In Katsina town, several individuals sustained bullet wounds from fire used by the police during the mourning procession and afterwards, as the well-armed police officers attempted to forcibly make their way into the Islamic Center of the movement. Teargas canisters were fired into the Center, where hundreds of women, children and older persons were trapped.

These casualty figures may further rise due to the fatal gunshot wounds sustained by some of the peaceful mourners.

While we do not wish to prejudge the accuracy of the above allegations, we express our most serious concerns about what appear to be severe violations to the right to life that occurred during the demonstrations; the possible violations of the right not to be subjected to torture or illtreatment of the protesters taken into custody and who subsequently died; the violations of the right to liberty and security of persons; and the restrictions imposed on the peaceful exercise of their rights to freedom of religion, freedom of expression and freedom of assembly and of association. These rights are protected under articles 6, 7, 9 18, 19, 21, 22 and 27 of the International Covenant on Civil and Political Rights (ICCPR), and the Convention against torture (CAT) ratified by Nigeria in 2001 and 1993 respectively.

We, note with concern the alleged violent police repression of the IMN demonstration, which took place in Abuja on 22 July 2019, and which resulted in the killing of a Deputy Commissioner of Police, a journalist and an unknown number of IMN members; and the Ashura processions in Katsina, Kaduna, Bauchi, Azare, Gombe, Ilesa, Goronyo and Malumfashi

We would like to highlight the role of the police in the towns of Abuja, Jos, Kebbi, Minna, Lafia, Yola, Gusau, Zaria, Kano, Jalingo, Damaturu, Hadejia and Potiskum: in these cases, the police appears to have peacefully managed the Ashura processions. We recommend that the UN Basic Principles on the Use of Force and Firearms be used to train and guide the police management of demonstrations so as to limit to the minimum necessary the use of violence and risk of violations of human rights.

We express serious concerns over the police treatment of those arrested for participating in the IMN demonstration of 22 July 2019 and the Ashura processions on 10 September and in particular allegations about several deaths occurred in police custody. Furthermore, there is significant cause for concern that due process and fair trial guarantees may have not been followed in some or all of the above-mentioned cases that went to court.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the ongoing detention of Mr. El-Zakzaky and the steps taken to implement Opinion No. 81/2018 adopted by the Working Group on Arbitrary Detention on 21 November 2018.
3. Please provide detailed information about the number and identities of all persons who were killed during the 22 July protest and the 10 September mourning processions as a result of police use of lethal and other force or who died in police custody as a result of the gunfire injuries they sustained during the demonstration, or other forms of the use of force by the police. At least seventeen persons were killed during the demonstration (including a Deputy Commissioner of Police and a journalist) as well as an undetermined number of protesters. Many other demonstrators were reported to have been injured by live bullet. At least nine protesters among those arrested by the police on 22 July have thus far been reported to have died in police custody.
4. In the cases of the deaths that occurred as a result of police use of force during the demonstrations, please provide detailed information, including forensic evidence, about the cause and circumstances of these deaths. If these deaths resulted from excessive use of lethal force against the victims, please explain the circumstances of the use of such force against protesters and how this is consistent with Nigeria domestic and international human rights norms.
5. In the case of the deaths in police custody, please provide information, including medical and forensic evidence concerning the cause(s) of the deaths. If these deaths resulted from the lack of medical care or from ill-treatment by the police, please provide information on any investigation ordered into these deaths and its results. Have any investigations been conducted into these deaths? If investigations were conducted, what were their results? If no investigation has been conducted, explain why, and how this is consistent with Nigeria's domestic and international human rights obligations.
6. Please indicate if those injured are receiving appropriate medical attention.
7. Please provide information on the factual and legal basis for the arrest and detention of the 70 protesters who were arrested following the 22 July demonstration, including the 61 alleged members of the IMN who remain in custody, as well as for the IMN members arrested at the Wuse Market in Abuja on 19 August 2019 and at the Banex area in Abuja on 27 August 2019. Please include information on whether all of these individuals have been charged with recognizable criminal offences, have been granted

access to a lawyer of their choice, and have been promptly brought before a judge to determine the validity of their detention.

8. Please provide comments on the allegations that that at least some of these individuals were forced to admit to the killing of the Deputy Commissioner of the Police under torture or ill-treatment. Has any investigation been conducted into these allegations, as required by Nigeria's international human rights obligations under the Convention against torture, ratified by Nigeria in 2001.
9. Please provide information about the rationale and justification for the Court to ban the IMN and the decision to declare it an unlawful group, and how this is compliant with international human rights standards, including the rights to freedom of expression, assembly and association. Please provide the criteria to determine that the activities of the movement amount to "acts of terrorism and illegality".
10. Please provide information about existing rules of engagement that define the steps to be taken by the police during demonstrations; as well as instructions given by the authorities to law enforcement officials regarding the use of force during the aforementioned demonstrations and the Ashura processions organized by the IMN.
11. Please provide information about the existing legal and procedural framework that regulates the exercise of the rights to peaceful assembly and association, freedom of expression and freedom of religion or belief, and in particular the right to observe religious rites, of persons belonging to religious minorities in Nigeria. How are these rights respected and effectively protected for all religious communities in the country?

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence, and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future as, in our view, the information upon which our concerns are based appears to be sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to articles 6, 18, 19, 21, 22 and 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Nigeria on 29 July 1993, which provide for the rights to life, right to freedom of thought, conscience and religion, right to freedom of expression, the rights to freedom of peaceful assembly and of association, and the rights of persons belonging to ethnic, religious or linguistic minorities.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. In its General Comment No. 36, the Human Rights Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, and that investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent. The Human Rights Council in Resolution 35/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" reiterated the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of executions, to identify and bring to justice those responsible; and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of executions. Furthermore, the Minnesota Protocol on the Investigation of Potentially unlawful death (2016) and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), state that an investigation must be a) prompt, b) effective and thorough, c) independent and impartial, and d) transparent. The Minnesota Protocol also indicates that a decision not to undertake an autopsy should be justified in writing and should be subject to judicial review.

With regards to the excessive of use force the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Officials provide that Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent

to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions recommended to States, in their joint report on the proper management of assemblies to ensure that law enforcement officials have the equipment, training and instructions necessary to manage assemblies wherever possible without recourse to use of force (A/HRC/31/66, para. 67 a)) and reminded that indiscriminate firing into a crowd is always unlawful (*idem*, para. 60).

We further wish to underscore that the suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient (A/HRC/20/27, para. 75).

We wish to make reference to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, which was adopted by the General Assembly in 1992. Article 1 of the Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end. Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision making processes on matters affecting them. Article 4.1 establishes that “States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

We also wish to bring to the attention of your Excellency’s Government the 2013 report by the Special Rapporteur on minority issues, on the minority rights-based approaches to the protection and promotion of the rights of religious minorities. The report highlights the conditions of structural vulnerability that religious minorities find themselves in, and notes that religious minorities may be at significantly greater risk of arbitrary arrest and detention on the basis of their religion, their religious or social functions or their activities to claim their rights or peacefully protest. In addition, it calls on States to undertake efforts to build a climate of trust, understanding, acceptance and interfaith cooperation, and to adopt positive measures to ensure the full enjoyment of their rights to non-discrimination and equality in all aspects of society (A/68/268, paragraphs 82, 83, 91a, 91g).

We would like to also refer to the 6th session of the Forum on Minority Issues with the theme “Beyond freedom of religion or belief: Guaranteeing the rights of religious

minorities”, held in Geneva in November 2013, as well as its recommendations (A/HRC/25/66).

With respect to the use of counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members (A/HRC/26/29, para. 59).

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in her report A/HRC/37/52, paragraph 47, notes that new counter-terrorism laws across the globe that criminalize freedom of expression or views that appear to praise, glorify, support, defend, apologize for or that seek to justify acts defined as “terrorism” under domestic law implicate both serious concerns of legality and limitations on freedom of thought and expression. The application of such provisions has been targeted at, inter alia, the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others. Furthermore, the non-violent criticism of State policies or institutions, including the judiciary, should not be made a criminal offence under counter-terrorism measures in any society governed by rule of law and abiding by human rights principles and obligations.

In this context, we would like to draw attention of your Excellency’s Government to the paragraph 28 of the report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism A/HRC/40/52/Add.2, in which he strongly condemns the use of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly. As a matter of international law, the imperative of effective counter-terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups. Misuse of counter terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly. These rights enjoy international legal protection, and the message of international law is clear and simple: Non-violent criticism of the State or any of its institutions, including the judiciary, cannot be made a criminal offence in any society governed by rule of law and abiding by human rights principles and obligations. Countering terrorism should not be used as an excuse to suppress peaceful critics, human rights activists and members of minority groups.